(28)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal No.108 of 2005

Appellants : (1) **Raj Kamal Shinghaniya**,
(Plaintiffs) S/o Late Shri Jiwanlal Shinghaniya,
aged about 53 years

(2) **Smt. Manju Devi Shinghaniya**,
W/o Shri Rajkamal Shinghaniya,
aged about 45 years

(3) **Mahesh Agrawal**,
S/o Late Shri Radheshyam Agrawal,
aged about 35 years

[All R/o Civil Line, Raipur (C.G.)]

Versus

Respondents : (1) **State of Chhattisgarh**
(Defendants) Through Collector Raipur,
District Office Area Raipur (C.G.)

(2) **Additional Tahsildar Raipur**
Competent Officer Tahsildar
Office of Tahsildar Raipur (C.G.)

Mr. Gautam Bhaduri, counsel for the appellants.

Mr. J.D.Bajpai, Government Advocate for the respondents/State.

J U D G M E N T

(Delivered on 29th April, 2005)

Per Vijay Kumar Shrivastava, J.

This is a second appeal directed against the judgment and decree dated 5-11-2004 passed by XIVth Additional District Judge, Fast Track Court, Raipur dismissing Civil Appeal No.1-A/2004.

(29)

2. The appellants/plaintiffs had filed a civil suit for damages and permanent injunction against the respondents/defendants on the averment that the appellant Nos.1 and 2 were in possession of the land measuring 0.195 hectares while the appellant No.3 was in possession of the land measuring 0.04 hectares of Khasra No.331 at Village Puraina. The said land at Village Puraina is Government land and situated adjacent to the land of the appellants/plaintiffs, therefore, they applied for allotment of the same in their favour, and their application was lying pending before the revenue authorities for consideration. The appellants had developed the suit land by implanting various fruit bearing trees and made the area green. All of a sudden, on 16-6-2001, the respondents issued a notice for removing the possession, and without affording any opportunity, partially demolished the structure and caused damage to the fencing of the said land.

3. The respondents/defendants, in their reply, submitted that, the appellants/plaintiffs had encroached upon the Government land and they have been removed from the said encroachment on 16-6-2001, and after having dispossessed, the appellants/plaintiffs have filed the civil suit on 18-6-2001 for perpetual injunction and damage, therefore, they are not entitled for grant of any relief.

4. Learned trial Court, after evaluating the evidence on record, held that, the appellants/plaintiffs have been dispossessed from the suit land on 16-6-2001, and they failed to prove the damage. Therefore, vide judgment and decree dated 21-12-2001,

learned IVth Civil Judge Class-I, Raipur dismissed the Civil Suit No.350-A/2001 filed by the appellants/plaintiffs. Aggrieved by that judgment and decree, the appellants/plaintiffs filed a Civil Appeal bearing No.1-A/2004 in the Court of XIVth Additional District Judge, Fast Track Court, Raipur, who, vide judgment and decree dated 5-11-2004, affirmed the finding arrived at by learned trial Court and dismissed the civil appeal.

5. According to Section 100 of the Code of Civil Procedure, second appeal lies to the High Court if the High Court is satisfied that, the case involves a substantial question of law. Therefore, learned counsel for the appellants advanced arguments to show that, the case involves a substantial question of law, and contended that, learned Courts below have drawn a presumption under Section 114 of the Evidence Act to hold that, the appellants/plaintiffs have been dispossessed under a valid and legal proceeding, and also contended that, the revenue authorities have not followed the rule of natural justice.

6. From perusal of the record, it is evident that, the appellants/plaintiffs, to support their case, have examined only one of the plaintiffs Shri Raj Kamal Shinghaniya, who, in his deposition, has admitted that, on 16-6-2001, the fencing had been damaged and the structure, built for residence of Chowkidar, had been destroyed by the officials of the respondent No.1. To prove removal of encroachment, the respondents have produced the concerned Patwari in evidence. The concerned Patwari Shri Dinesh Kumar Sharma, DW-1 very specifically stated that, he removed the encroachment of the land bearing Khasra No.331/1 measuring area

(31)

0.587 hectares and submitted his report which is Ex.D-1. In this way, from the evidence adduced by the respondents, which finds corroboration from the evidence of the appellants/plaintiffs themselves, it was proved that, the appellants/plaintiffs had been dispossessed from the suit land on 16-6-2001 by the revenue authorities.

7. Learned trial Court has drawn presumption on the basis of Ex.P-12, a notice dated 4-6-2001 issued by Additional Tahsildar, Raipur against the appellant No.1, Raj Kamal Shinghaniya regarding encroachment and fine, that the revenue authorities have passed the order after following the prescribed procedure, because contrary to it has not been proved by the appellants/plaintiffs. Section 114 of the Evidence Act provides to draw presumption that, judicial and official acts are regularly performed and learned trial Court, as contrary to it has not been brought on record, has drawn presumption regarding the encroachment proceeding to have been conducted in accordance with law.

8. The lis brought in Civil Court is not regarding the illegality or irregularity committed by revenue authorities in their proceeding, but it was a case for perpetual injunction based on possession. When both the Courts below have come to a conclusion that, the encroachment of the appellants/plaintiffs had been removed on 16-6-2001, and from the record, it is apparent that, the plaint had been filed for grant of perpetual injunction on 18-6-2001, apparently nothing remains in the suit. Admittedly, the land belongs to the Government and the appellants/plaintiffs were

(32)

encroachers, therefore, the Government was entitled to remove the encroachment and take possession of the suit land, which they did.

9. In my opinion, the contentions, raised by learned counsel for the appellants, have no force, and no substantial question of law is involved in this case.

10. The second appeal filed by the appellants/plaintiffs deserves to be dismissed and is accordingly dismissed.

Sd/-
V.K.Shrivastava
Judge

G.Singh